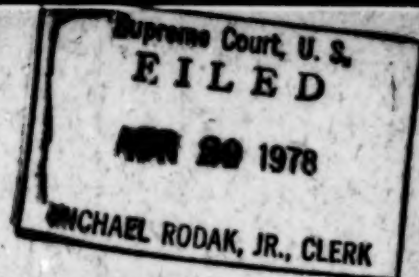


No. 77-1263



In the Supreme Court of the United States

OCTOBER TERM, 1977

ROBERT L. ANTHONY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

**MEMORANDUM FOR THE RESPONDENT
IN OPPOSITION**

**WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.**

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Petitioner contends that the imposition of federal income taxes and penalties violates his First Amendment rights.

On each of his untimely filed federal income tax returns for the years 1969 through 1972, petitioner sought to offset his entire taxable income by amounts designated as "war crimes deductions" (Pet. App. A1, A6). The Commissioner of Internal Revenue disallowed these deductions and asserted penalties for petitioner's late filing and for his negligent or intentional disregard of rules and regulations (*id.* at A1-A2). Petitioner then filed a petition in the United States Tax Court to contest the Commissioner's determination, claiming that "payment of the amount in issue abridges his religious freedom under

the First Amendment of the Constitution and would amount to complicity in alleged violations of international law committed by the United States in Southeast Asia during the years in issue" (*id.* at A2). The Tax Court upheld the Commissioner's determinations (*id.* at A1-A4), and the court of appeals affirmed (*id.* at A5-A7).

Petitioner does not challenge the lower courts' conclusion that his assertions with respect to the legality of the participation and conduct of the United States in the Vietnam war would not alter his liability to pay the income taxes and penalties in question. Rather, petitioner now relies solely upon the First Amendment, contending that requiring him to pay income taxes, part of which may go to support military expenditures, would impair the free exercise of the pacifist tenets central to his Quaker religion (Pet. 6-11) and would somehow force him "to join an established church which supports the payments of war taxes as a matter of church principle" (*id.* at 14).

As the court of appeals remarked, however, the sincerity of petitioner's religious beliefs does not "alter his obligation to share the common burden" (Pet. App. A7). The federal income tax as applied to petitioner in this case violates neither the Establishment Clause nor the Free Exercise Clause of the First Amendment. It is entirely neutral in its application and does not "aid one religion, aid all religions, or prefer one religion over another." *Everson v. Board of Education*, 330 U.S. 1, 15.

Nothing in the First Amendment grants immunity from otherwise valid legislation of general applicability merely because an individual disagrees, on religious grounds, with government policy. See *Murdock v. Pennsylvania*, 319 U.S. 105, 112; *Follett v. McCormick*, 321 U.S. 573, 577-578. See also *Autenrieth v. Cullen*, 418 F. 2d 586, 588-589 (C.A. 9), certiorari denied, 397 U.S.

1036; *Swallow v. United States*, 325 F. 2d 97, 98 (C.A. 10), certiorari denied, 377 U.S. 951; *Anthony v. Commissioner*, 66 T.C. 367, 373; *Russell v. Commissioner*, 60 T.C. 942; *Muste v. Commissioner*, 35 T.C. 913.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

APRIL 1978.